



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200650020

SEP 18 2006

T: EP: RA: T3

Uniform Issue List: 408.03-00

Legend:

Company A =
Company B =
Individual D =
Individual E =
Date K =
Date L =
Amount L =
Amount M =
Amount N =
Amount O =
Amount P =
IRA X =
IRA Y =

Dear

This is in response to your request dated , submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence dated , and supplemented the request.

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The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

You are under age 70 ½, and represent that you maintained an individual retirement account ("IRA X") at Company A, totaling Amount N. You rolled over Amount P. Amounts L and M were withheld for state and federal income taxes, respectively. You assert that your failure to accomplish a rollover of Amount O (the difference between Amount N and Amount P) within the 60-day period prescribed by section 408(d)(3) was due to an error on the part of Company A which led to Amounts L and M being inadvertently withheld as taxes. You further represent that Amounts L and M have not been used for any other purpose.

You maintained IRA X at Company A. In 2005 you opened IRA Y at company B through your investment advisor, Individual D. IRA Y was funded by rolling over funds from IRA X. Individual D provided the forms that you needed to authorize the transfer from IRA X to IRA Y. In a telephone conference with Individual D, you and Individual E, your husband, (who also was transferring funds from his IRA at Company A to an IRA at Company B) filled out the forms together, at the direction of Individual D. You and Individual E cross-checked the forms for accuracy and forwarded them together to Company A. On Date K, 2005, funds were transferred directly from Company A to Company B. You never had access to the funds. Shortly after the funds were transferred, you checked your IRA X statement from Company A and noticed that Amount N had been withdrawn. You made no further inquiry into the details, as you were satisfied that IRA Y had been properly funded.

In 2005, you accessed the IRA Y account and noticed a shortfall in the amount of Amount O. You then learned that Company A had withheld such amount for state and federal taxes. You assert that you never requested that taxes be withheld from the distribution. Individual E, who also rolled over funds from his IRA at Company A to an IRA at Company B at the same time that you did, did not have federal or state taxes withheld by Company A..

When you learned of the error, you immediately deposited Amount O into IRA Y on or about Date L, 2006.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount O from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

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(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

In this case, you and Individual E filled out the same forms, at the same time, and submitted them together to Company A in an attempt to accomplish a rollover. You and Individual E checked each other's forms for accuracy. Federal and state income taxes were not withheld from Individual E's distribution, but income taxes were withheld from your distribution. The information presented and documentation submitted by you is consistent with your assertion that your failure to accomplish a timely rollover of all the funds in IRA X was caused by an error on the part of Company A, which led to Amounts L and M being withheld for federal and state income taxes. The information presented by you is consistent with your assertion that you attempted to roll over Amount N into an IRA with Company B. Subsequently, and after the expiration of the 60-day rollover period applicable to the distribution of Amount N, you discovered that Amounts L and M were improperly withheld for federal and state income taxes.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount O from IRA X. Provided

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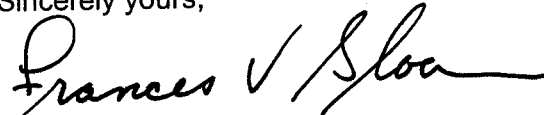
all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution of Amount O into IRA Y on or about Date L, 2006, will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact () at ()
Please address all correspondence to

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name and title.

Frances V. Sloan, Manager,
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose